



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

EngelmanLado, Marianne  
Digitally signed by  
EngelmanLado, Marianne  
Date: 2021.06.30  
17:03:47 -04'00'

TO: Melissa Hoffer  
Acting General Counsel

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employers and former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.<sup>1</sup> I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end **January 31, 2023**.

Former Employer
Vermont Law School Yale University Poverty & Race Research Action Council WE ACT for Environmental Justice African American Policy Forum Center for Public Representation

<sup>1</sup> For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters involving that former client for the duration of my ethics obligations.

Former Client <sup>2</sup>
<p>Ashurst Bar/Smith Community Organization</p> <p>Californians for Renewable Energy</p> <p>Center for Whole Communities</p> <p>Citizens for Alternatives to Radioactive Dumping</p> <p>Clean Power Lake County</p> <p>Community Action Works</p> <p>Concerned Citizens of West Baden Community</p> <p>EarthJustice</p> <p>Friends of the Earth</p> <p>North Carolina Climate Solutions Coalition</p> <p>North Carolina Environmental Justice Network</p> <p>REACH</p> <p>Sierra Club</p> <p>St. Croix Environmental Association Limetree Bay SEA</p> <p>St. Francis Prayer Center</p> <p>Waterkeeper Alliance</p>

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me for my former client, the University of Vermont. The definition of “former employer” excludes an entity of a state government, including a state university.<sup>3</sup> Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former clients for the University of Vermont.

On April 14, 2021, EPA’s Designated Agency Ethics Official, in consultation with the Counsel to the President, granted me a limited waiver of the provisions of Section 1, Paragraph 2 of Executive Order 13989 for one of my former clients, the Natural Resources Defense Council (NRDC). Similarly, on June 24, 2021, EPA’s Alternate Designated Agency Ethics Official issued an impartiality determination with respect to my former client, NRDC, under 5 C.F.R. 2635.502(d). I am now authorized to participate in specific party matters arising at EPA in which my former client, NRDC, is a party or represents a party, provided that I did not previously participate personally and substantially in that same matter for NRDC or any other party. *See Attachments.*

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<sup>2</sup> Natural Resources Defense Council (NRDC) is not included here as a “former client” because of the April 14, 2021 Ethics Pledge waiver that I received, as well as the June <date>, 2021 impartiality determination. I was, however, recused from participating in specific party matters in which NRDC was a party from my entry into EPA until April 14, 2021, and I remain recused from any specific party matters in which NRDC is a party if I participated personally and substantially previously in that same matter.

<sup>3</sup> *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

I have been advised by OGC/Ethics that, for the purposes of my pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>4</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with a former client, which is a state university. Therefore, I may not participate in a particular matter involving specific parties in which **University of Vermont** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts for one year from the day I last provided services, which is **January 31, 2022**.

Pursuant to the federal ethics rules, I understand that I have a covered relationship with my spouse and his employer, Northwell Health. *See* 5 C.F.R. § 2635.502(b)(1)(ii)-(iii). I will recuse from specific party matters where my spouse or Northwell Health is a party or represents a party, unless I am otherwise authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d).

### *FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

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<sup>4</sup> *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

## ATTORNEY BAR OBLIGATIONS

In addition to the pledge restrictions involving my former employers and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics. Set forth below are the cases pending at EPA in which I participated and from which I am recused for the entirety of my tenure at EPA:

CASE DESCRIPTION / SUBJECT MATTER	CASE CITATION
Litigation challenging EPA's enforcement of Title VI.	<i>Californians for Renewable Energy v. EPA</i> , case no. 4:15-cv-03292-SBA
Freedom of Information Request regarding ECRCO's docket.	EPA-2021-000375
Opposition to a Plantwide Applicability Limit permit decision.	In re: Limetree Bay Terminals, L.L.C. and Limetree Bay Refining, L.L.C., C.A.A. Appeals No.20-02M
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7, related to the New Mexico Environmental Department's issuance of a treatment, storage, and disposal permit.	EPA File No. 09R-02-R6
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to the Texas Commission on Environmental Quality's failure to provide effective public notice and access to TCEQ's programs.	TCEQ 02NO-20-R6
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to the City of Flint's administration of the Safe Drinking Water act and failure to implement procedures for addressing compliance with EPA's non-discrimination regulation.	City of Flint 19RD-16-R5

Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to Genesee County's administration of the Safe Drinking Water act and failure to implement procedures for addressing compliance with EPA's non-discrimination regulation.	Genesee County 18RD-16-R5
FOIA appeal of a request for records related to an EPA investigation of North Carolina's Department of Environmental Quality handling of CAFOs.	FOIA Appeal No. EPA-HQ-2020-001148

#### *DIRECTIVE AND CONCLUSION*

To avoid my participating in any of the matters from which I am recused, please refer those matters to the attention of **Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices**, without my knowledge or involvement. In the event that my circumstances change, e.g., my financial interests or my covered relationships, then I will consult with OGC/Ethics and update my recusal statement accordingly.

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations  
OGC Associates and Directors  
Regional Counsels  
Daniel Conrad, Acting Associate Deputy General Counsel

Attachments



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne **JAMES PAYNE**  
Deputy General Counsel for Environmental Media and Regional Law Offices,  
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Digitally signed by JAMES  
PAYNE  
Date: 2021.04.14  
13:21:48 -04'00'

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former client, the National Resources Defense Council (NRDC), is a party or represents a party, provided that you did not previously participate personally and substantially in the matter with NRDC or any other party.

**BACKGROUND**

On January 20, 2021, President Biden signed Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," which includes an Ethics Pledge. The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the "former client"<sup>1</sup> restriction at Section 1, paragraph 2:

*I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.*

You entered federal service at EPA effective January 31, 2021 and received your initial

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<sup>1</sup> A "former client" is defined as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Section 2(l).

ethics training on February 4, 2021, the same day you signed the Ethics Pledge. You have properly recused yourself from participating in any particular matter in which your former employers or any of your former clients is a party or represents a party. The EPA has identified, however, an interest in having you work on particular matters involving one of your former clients – namely, NRDC -- for which you will require a pledge waiver as set forth in Section 3 of Executive Order 13989. Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.<sup>2</sup>

## ANALYSIS

Your career has been devoted to civil rights and environmental justice. Prior to joining the Biden Administration, you directed an Environmental Justice (EJ) Clinic at Vermont Law School that trains students in community lawyering and civil rights enforcement in the environmental justice context, and also served as Lecturer at both the Yale University School of Public Health and the Yale School of the Environment, where you supervised interdisciplinary teams of law, environmental, and public health students working on climate justice issues.

Your experience also includes ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. You began your legal career as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where you represented clients attempting to break barriers of access to health care and quality education. You recently served as co-chair of the Equity and Environmental Justice Working Group of Connecticut's Governor's Council on Climate Change, and as a board member of both WE ACT for Environmental Justice and the Center for Public Representation. You have lectured widely and taught graduate, law, and undergraduate level courses. You also hold a B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University.

## PREVIOUS INVOLVEMENT IN FOIA CASES WITH NRDC

During the two-year period prior to your federal appointment, on behalf of the EJ Clinic you directed (first at Yale University and then at Vermont Law School), you and co-counsel Southern Environmental Law Center submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA). These FOIA requests were made on behalf of three client groups that included NRDC. This limited waiver applies only to NRDC.

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<sup>2</sup> See Office of Government Ethics Legal Advisory, LA-21-04 (Feb. 18, 2021).

The requests asked for information related to EPA's Title VI of the Civil Rights Act of 1964 (Title VI) docket, including complaints, acknowledgments, jurisdictional decisions, referrals and any dispositive decisions. Upon release of EPA's responsive records, the student team under your supervision reviewed the documents and discussed legal options in consultation with co-counsel and at the direction of the clients. Approximately four FOIA requests were submitted on behalf of these client groups, the first of which was in 2017 while you were at Yale University. You received no compensation specifically for this FOIA-related work that was distinct from your salary provided by your employers for running and supervising a clinic and serving as faculty. Although there were follow-up conversations with employees in EPA's External Civil Rights and Compliance Office (ECRCO) within the Office of General Counsel (OGC), they were limited to the FOIA response. There have been no legal challenges, appeals or litigation related to these FOIA requests.

#### YOUR OFFICIAL DUTIES ON BEHALF OF EPA

OGC serves as the chief legal advisor to the EPA Administrator and implements the nation's environmental laws. OGC also provides legal counsel to EPA policymakers and represents the Agency in court challenges to agency actions. In your position as Deputy General Counsel for Environmental Initiatives, you have responsibilities within OGC for the External Civil Rights Compliance Office, the Civil Rights and Finance Law Office, and the Pesticides and Toxic Substances Law Office (PTSLO). PTSLO is responsible for legal issues and related litigation for the Office of Chemical Safety and Pollution Prevention (OCSPP) in connection with OCSPP's regulatory efforts addressing pesticides and toxic chemicals governed respectively by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). Similarly, PTSLO also provides legal support for OCSPP related to the Pollution Prevention Act (PPA) and the Toxics Release Inventory (TRI), the program under the Emergency Planning and Community Right-To-Know Act (EPCRA) that informs citizens about toxic releases in their communities. NRDC is frequently involved in these regulatory areas and is often named as a party to the litigation that PTSLO addresses.

In the position of Deputy General Counsel for Environmental Initiatives, your participation in the review and direction of substantive environmental legal matters under FIFRA, TSCA, and TRI is critical to PTSLO's effectiveness in these areas. Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in PTSLO. Consequently, there is an overlap of recusals that is impinging the ability of OGC to interact with our political leadership in certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other OGC political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior involvement as an employee in a State government. Your restriction is due solely to prior service in discrete and limited situations that are unrelated to FIFRA, TSCA and TRI.

For the two years prior to your EPA appointment, the services you personally provided to NRDC were limited to those Title VI-related FOIA requests. You did not provide advice or counsel to NRDC or otherwise enter into an attorney-client relationship with them and received

no compensation from them. The nature of your previous affiliation with NRDC does not relate in any way to their involvement in non-Title VI matters, such as OCSPP litigation or regulatory actions, arising at EPA. During the time period relevant to Section 1, paragraph 2 of the Ethics Pledge, you had no involvement on behalf of NRDC with the types of litigation PTSLO handles.

## CONCLUSION

In your position as the Deputy General Counsel for Environmental Initiatives, you must be able to advise senior leadership, including the Administrator, and provide legal counsel and vital input into the Agency's programs and litigations that address pesticides and toxic chemicals. Your prior involvements with NRDC was limited in scope and focused only on a handful of FOIA requests.

For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

This limited waiver encompasses any such specific party matters arising at EPA where NRDC is a party or represents a party, and you did not previously participate personally and substantially while serving as an attorney for them or any other party. You are allowed to participate in those specific party matters, including meetings or communications relating to your official duties, where NRDC is present. However, you will remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, as well as your own attorney bar obligations.

cc: Dana Remus, Counsel to the President



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

**SUBJECT:** Impartiality Determination to Participate in Certain Specific Party Matters  
Involving the Natural Resources Defense Council

**FROM:** Justina Fugh Digitally signed by Justina Fugh  
Date: 2021.06.24  
22:33:48 -04'00'  
Alternate Designated Agency Ethics Official and  
Director, Ethics Office

**TO:** Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Prior to entering federal service on January 31, 2021, you directed two environmental justice clinics --first at Yale University and then at Vermont Law School – both of which provided legal services to clients and trained law students in community lawyering and civil rights enforcement. As part of the Vermont Law School environmental justice clinic, you and co-counsel Southern Environmental Law Center (SELC) submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA) on behalf of several clients, including the Natural Resources Defense Council (NRDC).

Because NRDC was a “former client” of yours for federal ethics purposes and under Executive Order 13989, you could not participate in any specific party matter involving this entity unless you first sought and obtained ethics approval. The Designated Agency Ethics Official granted you a waiver from the Executive Order on April 14, 2021, and this memorandum formally confirms my impartiality determination granted orally on that same date.

**NEED FOR A PLEDGE WAIVER**

Pursuant to Executive Order 13989, you signed the Ethics Pledge and are prohibited from participating in specific party matters in which your former employer or former client (as defined in Section 2, paragraphs (k) and (l)) is a party or represents a party. Mindful of the fact that you had previously provided limited legal services to NRDC solely in the context of FOIA, and given the Agency’s interest in having your participation in environmental matters with NRDC that are unrelated to FOIA, the EPA sought a waiver of the provisions of Section 1, paragraph 2 of the Executive Order on your behalf. This limited waiver, which was granted on April 14, 2021, authorized you to participate personally and substantially in specific party matters arising at EPA in which your former client, NRDC, is a party, provided that you did not previously participate personally and substantially in that same matter for NRDC or any other party. *See attachment.*

## NEED FOR IMPARTIALITY DETERMINATION

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E, “Impartiality in Performing Official Duty.” For one year from the date you last provided services to NRDC, you have a “covered relationship” with them pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me, you still cannot participate in any specific party matter in which NRDC is a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). Although I granted this determination informally previously, I am confirming it in writing now.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy General Counsel for Environmental Initiatives in specific party matters in which NRDC is a party, provided that you did not participate personally and substantially in the matter previously with NRDC or any other party. In making this determination to enable you to effectively carry out your duties as a Deputy General Counsel and to advance the interests of the Agency, I have taken the following factors into consideration:

Nature of the relationship involved – Your career has been devoted to civil rights and environmental justice. After graduating with your B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University, you served as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc., where you represented clients attempting to break barriers of access to health care and quality education. You also served for ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. In addition to lecturing and teaching about environmental justice, you also directed environmental justice clinics at Vermont Law School and Yale University.

Throughout your career, you have represented individual clients and nonprofits alike on a broad array of environmental law and environmental justice issues. Although NRDC frequently interacts with the Agency on regulatory matters and in litigation, I note that your own previous affiliation with NRDC was limited in scope. As set forth in the Biden pledge waiver issued on April 14, 2021, your previous service to NRDC was limited to FOIA requests on Title VI inquiries only, not related to any actual or underlying Title VI matters. In fact, you did not otherwise serve as the attorney of record for NRDC. Therefore, your prior relationship with NRDC does not weigh against you for the purposes of this factor.

Effect of the matter upon your financial interest – NRDC did not compensate you directly for your services; instead, any financial remuneration was paid to your former employer, Vermont Law School. You do not have a financial conflict of interest with the Vermont Law School.<sup>1</sup>

Nature and importance of the employee's role – In addition to serving as the chief legal advisor to EPA and implementing the nation's environmental laws, the Office of General Counsel also provides legal counsel to EPA policymakers and represents the Agency in defense of agency actions. In the position of a Deputy General Counsel, you must be able to advise senior leadership and provide legal counsel and vital input into the Agency's programs and litigations, including those that address pesticides and toxic chemicals among other areas. Your invaluable knowledge and experience are of great importance in advocating the interests of the Agency and in advising the Acting General Counsel and Administrator.

Sensitivity of the matter – We anticipate that specific party matters in which NRDC is a party and that did not involve you personally and substantially may arise during your EPA tenure that will merit your attention and participation because they raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in the Office of General Counsel. Consequently, there is an overlap of recusals that is impinging the ability of the Office of General Counsel to interact with its political leadership on certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior service as an employee in a State government. Your participation as part of your official duties as a Deputy General Counsel is of importance to the continued functioning and continuity of the Office of General Counsel and, therefore, is in the Agency's interests.

Under this limited authorization, you may participate personally and substantially in specific party matters that involve NRDC, so long as they are not the very same specific party matters on which you worked personally and substantially for NRDC or any other party. You will be allowed to participate in these specific party matters, including meetings or communications related to your official duties, where NRDC is present. However, you will

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<sup>1</sup> See note to 5 C.F.R. § 2640.201(c).

remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. You will otherwise fully comply with the remainder of the requirements imposed by the Executive Order 13989 and with all applicable federal ethics laws and regulations, as well as your own attorney bar obligations.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or (202) 564-1786.

Attachment

cc: Melissa Hoffer, Acting General Counsel  
Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations Programs  
OGC Associates and Directors  
Regional Counsels  
Daniel Conrad, Acting Associate Deputy General Counsel